IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 25 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

NATWARLAL V DESAI

Appearance:

1. INCOME TAX REFERENCE No. 25 of 1991
MR TANVISH U BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

In this case, the applicant- revenue has preferred the application being ITA No.15 of 1985 under Section 256(2) of the Income-tax Act and this Court has directed the Appellate Tribunal vide its order dated 8-1-1986 to draw a statement of case and refer the question of law as stated therein. Accordingly, the ITAT has referred to the following question of law for the opinion of this Court:-

"Whether, on the facts and in the circumstances of the case, the finding of the Appellate Tribunal that no sub partnership was formed between the assessee and his wife Smt. Suryakanta Natverlal and share income of the assessee's wife could not be included in the income of the assessee, is correct in law and sustainable from the material on record?"

2. Heard Mr Tanvish Bhatt learned Standing Counsel appearing for the applicant- revenue. Nobody appears on behalf of the respondent - assessee though notice was duly served.

The assessment year involved is assessment year 1980-81.

3. The issue involved in the present reference is squarely covered by the earlier decision of this Court in assessee's own case in ITR No.154 of 1989 decided on 5-7-2002. This Court has confirmed the view taken by the Tribunal in the earlier decision and has held that no subpartnership was formed between the assessee and his wife namely, Smt. Suryakanta Natverlal and share income of the assessee's wife could not be included in the income of the assessee.

Following the aforesaid decision, we are of the view that the Tribunal was right and justified in holding that no subpartnership was formed between the assessee and his wife namely, Suryakanta Natverlal and share income of the assessee's wife could not be included in the income of the assessee.

We, therefore, answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference is accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-